

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Martin Avila,

Plaintiff,

vs.

C.A. No. 0:10-2370-HMH-PJG

OPINION AND ORDER

Edgefield Federal Prison;

Mrs. Mary Mitchell, Warden;

Mr. Acosta, Assist. Warden;

Mr. Collie, Capt.;

Mr. Clark, Lt.;

Mr. Hollet, Lt.;

Mr. Neal, C Unit Manager;

Mr. H. Koger, III, B Unit Manager;

Mrs. S. Cheek, B Case Manager;

Mr. J. Bryant, B Counselor;

Mr. Johnson, C Counselor;

Mr. Santiago, SIS;

Mr. Roper, Unit Officer;

Mr. Upson, Unit Officer;

Mr. Flores, Unit Officer;

Mr. Kate, Unit Officer;

Mrs. Martin, Unit Officer;

Mr. Green, Unit Officer;

Mr. Evans, Unit Officer;

Mrs. Jackson, Unit Manager;

Mr. Fallen, Assist. Warden;

Mr. S. Smith, Recreation;

Mr. T. Nixon;

Mr. J. Sullivan;

Mr. Spark;

Mrs. Lathrop;

Mr. L. Morgan, Unit Officer;

Mr. Wilson, Unit Officer;

Mr. Burkett, B;

Mr. Burkett;

Mrs. V. Kepner, Education,

Defendants.

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ Martin Avila (“Avila”), a federal prisoner proceeding pro se, seeks certification of a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure. In her Report and Recommendation, Magistrate Judge Gossett recommends denying Avila’s motion. Avila filed objections to the magistrate judge’s Report on December 4, 2010.²

Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

In her Report and Recommendation, Magistrate Judge Gossett found that Avila’s motion for class certification was squarely barred by controlling Fourth Circuit precedent precluding certification of a pro se class action. (Report & Recommendation 2.) Upon review, the court finds that Avila’s objections to the magistrate judge’s Report and Recommendation are non-

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

² See Houston v. Lack, 487 U.S. 266 (1988).

specific, unrelated to the dispositive portions of the Report, and merely restate his claims.

However, in his objections, Avila requests that the court appoint him counsel. Because Avila has failed to show that exceptional circumstances exist that warrant appointment of counsel, his request is denied. Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). Therefore, after a thorough review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge Gossett's Report and Recommendation.

It is therefore

ORDERED that Avila's motion to certify class action, docket number 26, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
December 9, 2010

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.